

Legal fight to place socialist candidates on November ballot

SEP challenges ballot access laws in Ohio Supreme Court

Jerry White
14 October 2004

The Socialist Equality Party filed a legal action October 12 with the Ohio Supreme Court to overturn Secretary of State Kenneth Blackwell's decision to deny ballot access to its presidential and vice-presidential candidates, Bill Van Auken and Jim Lawrence. The SEP is seeking to overturn a series of anti-democratic provisions used by the Republican and Democratic parties in Ohio to deny the SEP candidates a place on the ballot in the November 2 election.

The legal action includes an appeal of the October 4 ruling by the 10th District Court of Appeals of Ohio, which upheld Blackwell's exclusion of the SEP candidates, and a motion for a writ of mandamus from the Ohio Supreme Court to place Van Auken and Lawrence on the ballot immediately. The SEP has also joined a lawsuit before the Ohio Supreme Court filed by independent presidential candidate Ralph Nader, who was removed from the ballot by Blackwell last month.

The SEP's case, which is being conducted by Cincinnati civil rights attorney Robert B. Newman, argues that the secretary of state's action violates the SEP candidates' constitutional right to due process and their First Amendment right to ballot access. It also argues that the exclusion of the SEP candidates deprives Ohio voters of their constitutional right to vote for a candidate of their choice.

On September 8, Blackwell ruled that 4,200 of the 8,000 signatures submitted by the SEP on its nominating petitions were invalid and the party had failed to reach the threshold of 5,000 signatures required to place its candidates on the ballot. A preliminary examination of the disqualified signatures by the SEP, however, revealed that hundreds of legally registered voters' signatures were rejected by county electoral boards, which arbitrarily disqualified them for the most minor technicalities, such as printing their names, instead of using cursive writing. If these signatures were added to those not challenged by the county boards, the SEP would have 5,231 valid signatures, well above the required amount.

Despite assurances by the secretary of state that his office would review these findings and determine the validity of the local boards' actions, to this day Blackwell's office has not issued a ruling. In defending this blatant violation of the SEP candidates' right to due process, Blackwell has relied on the state's restrictive election laws, which provide no means for candidates who are disqualified by election officials to challenge the ruling.

The SEP took its case to the Ohio Supreme Court after the US District Court and Ohio's 10th District Court of Appeals refused to overturn Blackwell's decision. [See: "Ohio appeals court upholds exclusion of SEP candidates"] In the state appeals court ruling, the

judges acknowledged that the SEP had demonstrated that Ohio election officials were guilty of "abuse of discretion" in disqualifying hundreds of valid signatures. They also conceded that many valid signatures were rejected because county election boards maintained outdated registration rolls.

Nevertheless, the court upheld the decision of the secretary of state, claiming the SEP had failed to prove that it would have reached the 5,000-signature requirement were it not for the "blanket disqualification" of hundreds of signatures by election officials. Of course, the failure of the election boards to maintain up-to-date rolls made it impossible for the SEP to establish the validity of many of the rejected signatures.

The SEP is continuing the legal fight to defend its right to appear on the ballot and uphold the democratic rights of the 8,000 people in Ohio who signed SEP nominating petitions. The party is demanding that the Ohio Supreme Court strike down the unconstitutional election laws used by the major parties to exclude their political opponents.

The complaint before the Ohio Supreme Court has two parts. The first is a motion to intervene in the superior court case filed by attorneys representing Nader, who was thrown off the ballot after the secretary of state disqualified nearly 11,000 of the 14,473 signatures submitted by his supporters. The thrust of Nader's suit is that county electoral boards wrongly disqualified thousands of signatures because officials failed to update their registration rolls to include the flood of newly registered voters who signed up over the summer months.

The lawsuit notes that in Hamilton County (Cincinnati), the electoral board acknowledged it had a backlog of 10,000 unprocessed applications even as it was checking Nader's petitions. In Lucas County (Toledo), the backlog was 12,000. The suit also notes that local election boards disqualified hundreds of signatures on the petitions circulated by at least five people who were erroneously declared "not registered" because their registration information had not been processed.

Nader's lawsuit demands that the Ohio Supreme Court order the county electoral boards to immediately update their registration rolls and re-examine all of the disqualified signatures. The SEP has intervened in the Nader case to make sure it is afforded the same treatment if the court rules in Nader's favor.

The attorneys representing the Nader campaign have welcomed the SEP motion to intervene in their case. Nader's running mate, Peter Camejo, told the *World Socialist Web Site* October 6 he "absolutely" defended the right of the SEP to be on the Ohio ballot, adding, "Any group of citizens who want to be on the ballot, and collects signatures

and meets the requirement, should be. First of all, the requirements are outrageous. This is the first time in history that the Democratic Party has ever conducted such an open campaign against an individual—Nader—not to run.”

The second element of the SEP’s case before the Ohio Supreme Court focuses on the constitutional issues raised by the effort to exclude the SEP and other third party candidates from the ballot. The legal brief filed by SEP attorney Newman argues that the lack of any meaningful review of the disqualified signatures violates the right to due process as guaranteed by the 14th Amendment to the US Constitution.

Newman cites a 1980 Georgia appeals court ruling that placed independent presidential candidate John Anderson on the ballot after state authorities gave him only eight days to garner proof that signatures had been erroneously invalidated. He notes that Secretary of State Kenneth Blackwell gave the SEP only six days, and then failed to review the results of the party’s review.

The lack of an opportunity to be heard at “a meaningful time and in a meaningful manner” makes a mockery of justice, the brief insists. It adds that it is implicit under Ohio law “that the secretary of state provide a review process in order to carry out his obligation to see to it that local election officials observe election laws. In this instance, the secretary of state has afforded no process whatsoever.”

Newman notes that the Florida Supreme Court, which recently ordered Nader to be placed on the state ballot, ruled, “it follows that when the State imposes a burden upon the access to the ballot, the burden must be clearly delineated. Thus, any doubt as to the meaning of statutory terms should be resolved broadly in favor of ballot access.”

The Florida court further cited a 1956 ruling in the *Ervin v. Collins* case, which said, “Even if there were doubts or ambiguities as to his eligibility, they should be resolved in favor of a free expression of the people... It is the sovereign right of the people to select their own officers and the rule is against imposing disqualifications to run. The lexicon of democracy condemns all attempts to restrict one’s right to run for office.”

The brief further argues that the SEP has presented far more signatures than required, yet the secretary of state has never provided any evidence as to why thousands of signatures should be disqualified. Citing a 2004 Pennsylvania case, the brief states, “The Court stated that there is a presumption that the signatures on the nominating petitions are valid, and the burden is on the objects to prove otherwise.”

The brief then challenges the constitutionality of Ohio’s requirement that a petition signature be counted only if the address on the petition is the same as that which appears on registration records. Given the mobility rate in the US—particularly of low-income workers and college students—such a requirement violates the First Amendment rights of as many as one-third of the voters in Ohio. In some states, including Iowa and Minnesota, there are no such restrictions, and all those eligible to vote are allowed to sign. Moreover, the brief noted, the requirement that the petition address match information on registration rolls was recently struck down as unconstitutional by a Maryland appeals court that ordered Nader to be placed on the state ballot.

The brief also cited a 2002 Pennsylvania case in which the court declared it was unconstitutional to bar unregistered voters from signing nominating petitions because “millions of unregistered Pennsylvanians are deprived of their right to associate with

candidates.”

The brief concludes by noting that Ohio law requires only that petitions be signed by “qualified electors,” not registered voters. Since any US citizen over 18 is a qualified elector, and the electoral boards did not disqualify any petition signers on the grounds that they were not qualified electors, the motion argues that “all 7,983 signatures [submitted by the SEP] should be counted.”

The legal battle in Ohio concerns the overt attack on voting rights that is being carried out in the 2004 elections. The Democratic Party has taken the lead in seeking to exclude candidates who oppose the war in Iraq and the political monopoly of the two big business parties. In their efforts to prevent the SEP candidates, Nader and other third-party candidates from gaining ballot access, the Democrats are using methods that recall those used by the Republicans in Florida to suppress votes and steal the 2000 election.

At the same time, Republican officials, particularly in closely contested states, have established election rules that could disenfranchise hundreds of thousands of voters likely to cast ballots for Kerry. Ohio Secretary of State Blackwell, co-chairman of Bush’s reelection campaign in the state, along with Republican secretaries of state in Missouri, Florida, Michigan and Colorado, is flouting a new federal law that requires states to give voters whose names do not appear on the registration rolls a “provisional ballot” that will count if it can be determined after election day that the voter was properly registered. Blackwell and others have said provisional ballots from eligible voters should be disqualified if they were cast in the wrong precinct, a move that would discriminate against low-income voters who tend to move more frequently.

In defending his actions, Blackwell spelled out his anti-democratic views. “What you have here is a clash of ideals,” he said. “There are those that believe a person should be able to register any time, on any form, and vote in any place. Then you have another point of view—my point of view—that says ours is a society of rule and law, and rules have to be complied with to turn a ballot into a vote.”

Such arguments are thoroughly anti-democratic. They imply that suffrage is a privilege, rather than a right, and that it is legitimate to place the onus on the citizen to “prove” his fitness to vote. This is, in principle, the same standpoint that was used to justify the denial of voting rights to blacks—using such devices as literacy tests—in the American South during the Jim Crow era.



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